

JOHN W. FINN

IBLA 84-845 Decided May 23, 1985

Appeal from decision of Montana State Office, Bureau of Land Management, rejecting recordation of mining claim M MC 110274.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Recordation

Where a mining claim was located in July 1969 and a copy of the official record of the notice of location was not filed with the proper BLM office on or before Oct. 22, 1979, the claim was properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1982).

APPEARANCES: William P. Driscoll, Esq., for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

John W. Finn appeals from a July 24, 1984, decision issued by the Montana State Office, Bureau of Land Management (BLM), rejecting the recordation of the Our Only Chance lode mining claim (M MC 110274) because it was not submitted for recordation on or before October 22, 1979.

Appellant's mining claim was located July 31, 1969, and recorded in the county recorder's office on August 20, 1969. On July 6, 1984, appellant wrote BLM the following letter:

Gentlemen:

Enclosed please find certified copy of Location Certificate filed for the above-mentioned mining claim [Our Only Chance lode mining claim], which I wish recorded and registered immediately.

Additionally, I enclose certified copies of all Proofs of Labor (certified) from and thereafter, including the 1983 assessment year to also be recorded with you. I also enclose my check in the amount of \$5.00 for the registration of the original location and I understand, correct me if I am wrong, that there is no

charge for registering the Proofs of Labor. I also enclose my map of the location of the claim in Judith Basin County.

In its decision BLM rejected the document filed for recordation and declared the claim to be abandoned and void because the certificate of location was not filed with BLM by October 22, 1979, as required by section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1982).

In his statement of reasons, appellant maintains that when he recorded his claims with the county and made annual filing of evidence of assessment work he had done all that he could to establish and maintain ownership of his claim. He also challenges the constitutionality of the abandonment provision of FLPMA, 43 U.S.C. § 1744(c) (1982), and argues that under Rogers v. United States, 575 F. Supp. 4 (D. Mont. 1982), he is entitled to a hearing to demonstrate that no abandonment of his claim did in fact occur.

[1] Appellant was required pursuant to section 314(b) of FLPMA to record his claim with BLM in 1979. That provision provides in pertinent part:

(b) The owner of an unpatented lode or placer mining claim or mill or tunnel site located prior to the date of approval of this Act shall, within the three year period following the date of approval of this Act, file in the office of the Bureau designated by the Secretary a copy of the official record of the notice of location or certificate of location, including a description of the location of the mining claim or mill or tunnel site sufficient to locate the claimed lands on the ground.

The consequences for failure to comply with section 314(b) of FLPMA, is stated in section 314(c): "The failure to file such instruments as required by subsections (a) and (b) shall be deemed conclusively to constitute an abandonment of the mining claim or mill or tunnel site by the owner;* * *."

The applicable regulation, 43 CFR 3833.1-1, reads:

Mining claims and sites which were located prior to October 21, 1976, the effective date of the Act, but which had not been recorded in the proper BLM office on or before October 22, 1979, as required by the Act, are by law conclusively deemed abandoned and void. There is no statutory provision for accepting a notice or certificate of location for such abandoned and void claim or site.

Appellant's mining claim was located in July 1969, but not recorded with BLM on or before October 22, 1979, as required by the statute and implementing regulation. Accordingly, BLM properly declared the claim abandoned and void. William E. Day, 72 IBLA 364 (1983).

The Rogers decision cited by appellant does not dictate a different result. The District Court in Montana held in Rogers v. United States,

supra, that section 314 of FLPMA violated fundamental procedural due process, because the provision failed to provide for notice and an opportunity for hearing prior to determining the claims were abandoned and void. An appeal from a similar decision subsequently issued by the Nevada District Court in Locke v. United States, 573 F. Supp. 472 (1983), was taken to the United States Supreme Court. On April 1, 1985, the Supreme Court reversed the district court in Locke.

The Supreme Court in United States v. Locke, 105 S. Ct. 1785 (1985), noted that "Congress has made it unnecessary to ascertain whether the individual in fact intends to abandon the claim, and there is no room to inquire whether substantial compliance is indicative of the claimant's intent -- intent is simply irrelevant if the required filings are not made." Id. at 1796. Thus, since appellant did record his notice of location and make annual filings, there is no need for a fact-finding hearing as to whether he intended to abandon his claim. The failure to file, in and of itself, constituted abandonment of his claim under the statute. Appellant has not been deprived of any due process rights. Id.

Therefore, pursuant to the authority delegated the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

We concur:

James L. Burski
Administrative Judge

R. W. Mullen
Administrative Judge

